THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No. 30977 of 1997

Date: 24-01-2007

Between:

Bandi Vijaya Raju .. Petitioner

And

The District Collector, Guntur district, Guntur, and others

.. Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No. 30977 of 1997

ORDER:

This Writ Petition has been instituted questioning the orders of cancellation of a house site patta granted in favour of the Writ Petitioner. The order of cancellation has been passed on 25-08-1997. The reason assigned for cancellation of the house site granted earlier in favour of the Writ Petitioner on 30-11-1996 is that the land forming part of the patta was in fact used as a play ground by the children of the adjacent school situated in Harijanwada.

(2) Heard the learned counsel for the Writ Petitioner Sri G. Krishna Murthy and the learned Government Pleader for Assignment.

(3) The learned counsel for the Writ Petitioner would urge that if the land, which has been once assigned to the Writ Petitioner is needed for the State for meeting any other public purpose, the same is liable to be acquired, and the Writ Petitioner ought to have been paid the compensation there for. Without following this procedure, the land could not have been resumed by the State. The second principal contention canvassed by Sri G.Krishna Murthy was that the order of cancellation of a house site patta visits the Writ Petitioner with evil consequences, and

therefore, he ought to have been afforded an opportunity of hearing before the orders of cancellation are passed. Since this essential principle of natural justice has not been complied with, the impugned order deserves to be set-aside.

(4) Per contra, the learned Government Pleader would urge that the Writ Petitioner has been assigned land by way of a house site patta on 30-11-1996 under a mistaken impression that he was living independently, whereas, the enquiry conducted by the Revenue administration has revealed that he is not separated from his parents, and that he is living with his father, and that the father of the Writ Petitioner was himself assigned a suitable house site and therefore, the very grant in favour of the Writ Petitioner is the result of misrepresentation of the relevant facts by the Writ Petitioner, hence the cancellation is unexceptionable. Alternatively, the learned Government Pleader would urge that the land in question was put to use as a play ground by the children studying in the adjacent school situated in Harijanwada of the same locality, and therefore, to sub-serve the public purpose, the State has got the power to resume the land assigned in favour of the Writ Petitioner on 30.11.1996. Since the predominant public purpose is what is sought to be achieved by the resumption, it does not call for interference. The learned Government Pleader would also point out that a show cause notice has preceeded the impugned order of cancellation and the same was affixed on the front door of the premises at which the Writ Petitioner was residing, and therefore, the criticism that the respondents have not complied with the principles of

natural justice is factually baseless.

(5) The contention canvassed by the learned Government Pleader that the impugned order has been passed after putting the Writ Petitioner on notice, perhaps lacks credibility, for, the notice in question has not been served or delivered to the Writ Petitioner, but it was said to have been affixed on the front door. No reasons are assigned as to why the Writ Petitioner himself has not been served with such a notice and as to why the substituted mechanism of affixture has been attempted by the respondents. On one hand, the respondents have asserted that the Writ Petitioner has been living with his parents at a different premises, therefore, there could not have been any difficulty in such circumstances to effect the service of the show cause notice on the Writ Petitioner. For the failure to serve and supply the show cause notice preceeding the impugned order, I hold that the principles of natural justice have been complied in the breach by the respondents.

(6) Dealing with the first contention of the learned counsel for the Writ Petitioner, if the land is required to meet any other public purpose, the State has got undoubted power to resume the same, but however, the resumption of land has to necessarily be based upon the appreciation of all correct and relevant factors. No material has been brought out to show that this particular land is put to use as a play ground by the children of the adjoining school situated in Harijanwada. If only the Writ Petitioner had been provided with an opportunity, which is fair and reasonable one, that would have enabled him to

demonstrate that the play ground or the land available and utilized as a play ground by the inmates of the school is different one from that of the land assigned to him. He would have demonstrated to the satisfaction of the respondents that the land in question is not the one which is required to be utilized as a play ground by the inmates of the said school. If the land in question is truly put to use by the inmates of the school as a play ground, it is undoubtedly a public compulsion to set apart such a land for being utilized as a play ground. Providing for such a facility, answers the broad spectrum expression of public interest. But however, the same has got to be established with reference to the factual data. Since the Writ Petitioner has not been provided with an opportunity to demonstrate the correctness or otherwise of the so called elements of public interest leading to the eventual cancellation of the patta in question, it is only appropriate for the respondents to conduct an enquiry at the village and on the basis of the findings arrived at such an enquiry, the other proceedings can be initiated.

(7) Further, since this Writ Petition has been pending for a very long time and to cut down further unnecessary time loss, I consider it appropriate to direct the third respondent-Mandal Revenue Officer to conduct an enquiry into the matter on 19.02.2007, and if it is not convenient for the Mandal Revenue Officer to conduct the enquiry on the said date, he may conduct the same on any other subsequent date, but however, after informing the Writ Petitioner of the date on which the enquiry will be conducted in the village concerned before hand. At any

rate, the enquiry be completed in the matter and appropriate orders be passed on or before 31.03.2007. If the land assigned to the Writ Petitioner on 30.11.1996 is essentially required to be set apart as a play ground to be utilized by the inmates of the school in the adjoining Harijanwada, it is open to the third respondent to consider the feasibility of granting any other suitable house site in favour of the Writ Petitioner, provided the third respondent is satisfied that the Writ Petition falls within the norms of eligibility fixed by the State for the purpose of granting house sites.

(8) The Writ Petitioner is directed to appear before the Mandal Revenue Officer on 19.02.2007.

For the aforesaid reasons, the Writ Petition stands disposed of by setting aside the impugned order to enable the enquiry to be conducted in the matter afresh as directed. No costs.

(N. RAMAMOHANA RAO,J)

24.01.2007
Note: Issue CC in one week
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